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November 29, 2004

**ELECTRONICALLY FILED**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554


Re: EX-PARTE COMMUNICATION  
MB Docket No. 03-206

Dear Ms. Dortch:

Transmitted herewith on behalf of Dominion Video Satellite, Inc. ("Dominion") is the response that Dominion filed on November 22, 2004 to the letters filed with the Bureau of Enforcement by EchoStar on October 24, 2004; Daystar on November 1, 2004; and Daystar on November 8, 2004.. The Dominion letter of November 22 is being sent to the following members of the Media Bureau: W. Kenneth Ferree, Eloise Gore, and Rosalee Chiara.

The above November 1 Daystar letter also addressed this proceeding. Daystar's position is that, since it is no longer carried as a PIO channel on EchoStar, Dominion's complaint that EchoStar received more than its expenses for carrying Daystar is now rendered moot. Since Daystar is no longer carried as a PIO channel, it follows from Daystar's position that the entire proceeding has been rendered moot.

Very truly yours,

  
Marvin Rosenberg

cc: W. Kenneth Ferree, Media Bureau  
Eloise Gore, Media Bureau  
Rosalee Chiara, Media Bureau  
Robert L. Olender, Esq.  
Pantelis Michalopoulos, Esq.

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November 22, 2004

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NOV 22 2004

Federal Communication Commission  
Bureau/Office

Kenneth M. Scheibel, Jr.  
Investigations and Hearing Division  
Enforcement Bureau  
Federal Communications Commission  
c/o NATEK  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: EB-04-IH-0140

Dear Mr. Scheibel:

The following letters have recently been filed with the Bureau of Enforcement: On October 24, 2004, EchoStar informed the Bureau it was no longer carrying Daystar as a public interest programmer but it continues to carry some Daystar local broadcast stations; On November 1, 2004, Daystar requested the termination of this proceeding because it was no longer being carried as a public interest programmer on EchoStar; and on November 8, 2004, Daystar filed its response to the Bureau's letter of October 8, 2004. From the foregoing letters, one can only conclude that an order to show cause should be issued and an evidentiary hearing held to fully resolve the factual issues before the Bureau.

The EchoStar letter is misleading in stating that it does "carry some Daystar local stations." EchoStar is not carrying Daystar's local stations, but rather, it carries the national feed of the Daystar programming in those DMA's where

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Daystar has full service stations, denying viewers in these DMA's the local programming of Daystar's local stations.<sup>1</sup> Moreover, the Daystar programming is not part of EchoStar's local into local package in the DMA's in which Daystar is carried. Unlike EchoStar's normal charge for a local station package, Daystar is carried in the clear, it is part of the Top 60 package, and it is carried on the same channel in all DMA's (DISH Network Channel 9408) in violation of Section 76.66 of the FCC's rules which requires local stations to be carried on contiguous channels.<sup>2</sup> Finally, the issue of whether EchoStar improperly carried Daystar as a public interest programmer is not resolved by ceasing such carriage.

The Daystar request for dismissal of this proceeding obviously cannot be granted. The Bureau's investigation is not primarily directed to Daystar's actions as a public interest programmer. The Bureau is investigating whether advertisements have been broadcast over noncommercial stations as well as its public interest channels on DISH Network and DirecTV.<sup>3</sup> Daystar's responses to the Bureau's letters fully support the Bureau's need to continue to investigate Daystar's compliance with the FCC's rules.

The latest filing by Daystar further demonstrates Daystar's deliberate avoidance of the FCC's rules. One would expect that the questions posed to Daystar by the Bureau would cause a reasonable licensee to critically examine its practices for compliance with the FCC's rules and take necessary corrective measures. Daystar, however, has not altered its practices, rather, it has altered its responses to the Bureau. First, Daystar responded that the consideration received from programmers is for carriage on Daystar's stations, cable systems and direct broadcast systems which carry Daystar Network programming<sup>4</sup>, the only remuneration received by the noncommercial stations is from Daystar, and Daystar

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<sup>1</sup> In light of EchoStar's Comments in the Commission's rule making proceeding on Broadcast Localism, MB Docket NO. 04-233, why has EchoStar chosen to carry Daystar's national feed rather than Daystar's local stations? In its Comments, EchoStar emphasized a requirement for local programming and advocated that local stations that do not provide local programming should lose their right to must carry under SHVIA. EchoStar's choice supports the conclusion that Daystar's stations are not providing local programming.

<sup>2</sup> See attachment A, content of an EchoStar's memo.

<sup>3</sup> Bureau's letter of May 28, 2004.

<sup>4</sup> Daystar's letter of August 12, 2004 provides, as Exhibits W & X, two contracts each of which have attached an exhibit of Daystar's audience coverage, including its noncommercial stations. Dominion's September 2, 2003 filing, tab 8, submitted a letter from Marcus Lamb to the public in which he concedes the selling of air time on all of Daystar's stations, commercial, non-commercial including the public interest channels.

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has been providing programming to noncommercial stations for seven years.<sup>5</sup> Later Daystar changed its response to the amounts received from programmers are a recovery of the costs of operating the noncommercial stations and less than the operating expenses for producing and broadcasting such programs.<sup>6</sup> In its latest response, Daystar now states that there is confusion because it used the same contract for its commercial and noncommercial stations and it can support its charges to programmers based only on its commercial stations,<sup>7</sup> Indeed, the contract, Exhibit BB, submitted with Daystar's latest letter omits the noncommercial stations in the attachment showing audience coverage, but this has little relevance since Daystar does not state that the noncommercial stations will no longer broadcast all of the Daystar Network programming. Daystar has moved from admitting it charges for program time on its noncommercial stations to now stating that confusion arises because of the contract that it uses and, moreover, it is "unnecessary" to include the noncommercial stations in its charges to programmers. Daystar's "new" rate card provides for similar rates that are now principally supported by low-power TV stations that have limited coverage and are not normally carried on cable and satellite carriage. Daystar's full power non-commercial stations and its channels on EchoStar and DirecTV which were significant outlets have been deleted. Obviously, the questions of whether Daystar has violated the FCC's rules by selling time to programmers remain unanswered and a question of candor has arisen from Daystar's changing responses.

In addition to selling program time on noncommercial stations, Daystar's own responses demonstrate the practice of broadcasting advertisements on noncommercial stations on which the programs are broadcast. Daystar concedes that it has been providing programming to noncommercial stations for over seven years. Daystar presents programs that raise money for the purchasers of air time and not for the noncommercial stations. Products are continually being pushed on these programs. For example, during the entire time that she interviews her guests, Paula White holds in her hand the products produced by the guests and repeatedly informs the audience of the telephone number to be called to order the products. Paula White is apparently purchasing commercial products at discount and selling them at substantial markup on her program. The same buying and selling procedure is followed by Daystar on its own produced "Celebration" and "Joni," programs. On Daystar's own programs, for-profit companies are selling products directly to the viewers using commercial advertisements with call to action

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<sup>5</sup> Daystar letter of June 28, 2004.

<sup>6</sup> Daystar letter of September 15, 2004.

<sup>7</sup> Daystar letter of November 8, 2004.

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words and the for-profit company's phone number.<sup>8</sup> These are not isolated incidences; these are common practices on Daystar's non-commercial stations..<sup>9</sup>

Although Daystar seeks to draw a comparison between its practices and the practices of noncommercial station KERA-TV, Dallas Texas, undoubtedly there is no similarity between the two. Normally, noncommercial stations such as KERA-TV will have definitive breaks in its programming during which the station solicits contributions for itself and offers premiums that vary with the amount of the contribution. These stations do not sell time to programmers engaged in fund raising for their own benefit. When a KERA-TV contributor receives their premium, it may be expected that the station will provide a receipt stating the tax deductible amount of the contribution and the value of the premium. As has been shown that did not occur when Ms. Johnson purchased Valerie Saxion products.<sup>10</sup>

It is clear that for many years Daystar has been running a commercial operation on noncommercial stations. It has enriched itself by selling program time and products. Moreover, as Dominion has previously shown, Daystar sold its commercial television station in the Dallas DMA for substantially more money than it paid for the purchase of a noncommercial station in the same DMA.<sup>11</sup> Since Daystar makes no distinction between the operation of a commercial station and a noncommercial station, it has no need to operate commercial stations. Daystar's practices have been going on for many years and enough is enough.

Very truly yours,

HOLLAND & KNIGHT LLP

Marvin Rosenberg

By:   
Counsel for Dominion Video Satellite Inc.

cc: Robert L. Olender  
Pantelis Michalopoulos

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<sup>8</sup> Dominion letter of July 9, 2004

<sup>9</sup> Attachment B hereto is a proposal from Valerie Saxion which was received by Dominion.

<sup>10</sup> Dominion letter of August 23, 2004, Exhibit 3.

<sup>11</sup> Dominion's letter of July 9, 2004, Footnote 3.



**Rosenberg, Marvin (WAS - X77147)**

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**From:** Kathy Johnson [Kathy.Johnson@SkyAngel.com]  
**Sent:** Friday, October 22, 2004 12:22 PM  
**To:** Kathy Johnson  
**Subject:** DISH NETWORK INTERNAL MEMO ON DAYSTAR REMOVAL

<http://www.satelliteguys.us/member.php?userid=1>  
<<http://www.satelliteguys.us/member.php?userid=1>>

Effective Thursday, October 21, 2004 by 12:00 noon ET, Daystar will no longer be available nationally on DISH Network channel 9408. Dominion/Sky Angel has enforced its contractual right to prohibit DISH Network from carrying this channel on a national basis.

However, in 12 local DMA's, Daystar will be available to subscribers of America's Top 60 and above at no additional cost. In the 12 markets listed below, Daystar can be found on DISH Network Channel 9408 on the satellite located at the 110 position.

Boston  
Honolulu  
Oklahoma City  
Charleston, WV  
Houston  
Phoenix  
Dallas  
Indianapolis  
Seattle  
Denver  
Little Rock  
St. Louis

Also effective Thursday, October 21, 2004 by 12:00 noon ET, DISH Network will launch a new channel (9405), which will carry EPG language and a slate to communicate this change to customers that will no longer have access to Daystar.

Channel #: 9405

EPG Call Letters: DAY

DISH Network sincerely regrets any inconvenience.



# **ATTACHMENT B**

## **Valerie Saxion Proposal**

## Television Station Packages

### Why Dr. Saxion?

"I began watching Christian television because of the informative health shows that don't appear on secular TV. Dr. Saxion especially impressed me. She's discussed working in a health club, owning her own health food store and gaining a doctorates degree. I'm also impressed that she is living proof that what she teaches or preaches works".

"She's a 5'1" tall, attractive, mother of eight, married to the same man since 1980 and has bundles of energy and an engaging personality."

"Her love and care for those with health problems literally jumps off the screen. You want to watch her because you want to be like her." Rather than just another plastic pretty health expert, she's today's woman, balancing career, motherhood, and beautiful besides. Her faith in God and her strong desire to give Him all the glory are evident. His love shines through her." Sue McDonald, Santa Barbara, Ca.

Dr. Saxion is available to appear on your network or television station to discuss health matters. When hosts open the lines for live caller questions there are always more callers than time permits but this always makes for a lively and informative time.

Her company, Valeric Saxion's Silver Creek Labs, is a full service Nutraceutical supplier from which product orders may be directly shipped to your viewers. We also work with fulfillment houses such as MicahTek that may take your callers orders and ship direct.

There are a number of ways to arrange Dr. Saxions appearance:

1. Station buys products at wholesale, Dr. Saxions expenses are negotiable, calls come to station, and station keeps profits and fulfills orders.
2. Dr. Saxion appears for free, covers all expenses takes orders, fulfills orders and donates 20% to 50% of proceeds to station depending on items offered.
3. Station pays expenses and Dr. Saxion puts on a free seminar for viewers as well as appearing on the station, profits are divided equally.
4. Dr. Saxion may also appear without expenses or compensation in some cases.

## **Valerie Saxion's Silver Creek Labs**

Before receiving her Doctorial degree in Naturopathy, Dr. Saxion was active in research, formulation, and sales of nutraceutical products. This resulted in Silver Creek Labs, a premier vendor with over 70 cutting-edge health products that cover a wide range of healing modalities, including:

Anti-Aging, Beauty, Blood Pressure, Brain Enhancing, Chelation, Cleansing and Digestion, Constipation, Energy, Food Supplements, Immune Boosters, Pain Release, Minerals, Oxygen Supplements, Weight Loss, as well as Books, Audio and Video Tapes.

Many of these products contain amazing documented testimonies that combat some of the most serious plagues of our day. Silver Creek Labs is unique in the industry with a less than 1% return rate, and repeat buyers account for over 60 percent of monthly business.

### Essentials for Feeling Great and Living Longer

[Shopping](#)
[Show Notes](#)
[Valerie Saxion, N.D.](#)
[Testimonials](#)
[Specials](#)
[Shopping Cart](#)
[Express Order](#)
[Books and Tapes](#)
[Self Tests and Diets](#)
[Wholesalers](#)
[Preferred Stores](#)
[Contact Information](#)
[Policy, Terms  
& Subscriptions](#)

### October 2004 Special

Buy 3 of any one product and receive one of that same product free!

[Click here to place your order today.](#)

(Offer good through 10/31/2004. Shipping charges apply to free items.)

### Sign up

for our newsletter to get  
updates and monthly specials  
directly to your email address.

### Valerie Saxion's Silver Creek Labs Distributor Terms and Conditions

Welcome to Silver Creek Labs! We appreciate your interest in becoming a distributor of our products and to forward to helping you get started. All information given will be held in the strictest confidentiality.

As a distributor you will not pay any start-up fees and you will receive free literature on products as well as upcoming seminars and new product information. You will be eligible for product discount of 20%-30% off o retail prices.

### Terms and conditions of Silver Creek Labs distributorship:

- Place an order with the products of your choice totaling one of the allotted amounts
- To receive a 20% a discount, a \$350. minimum order must be placed
- To receive a 30% a discount, a \$700. minimum order must be placed
- Full retail will be charged on the initial order, the discount will apply to all subsequent orders
- Discounts cannot be applied to monthly specials, such as buy three get one free
- Discount terms are valid for one-year and are renewed upon receipt of the third order received withi the distributor term year.
- If the minimum number of three orders is not placed within the allotted year, you may continue your distributorship and receive your discount amount paying a \$100. service fee.
- Any order placed after the opening retail order must be a minimum of \$50. before shipping is added
- Advertising is encouraged; however, any form of advertisement must be communicated to and approved by your Silver Creek Labs representative.
- Distributorship is strictly for reselling products, we do offer discount for personnel use.

All terms and conditions will be applied fairly and consistently with everyone interested in becoming a Silver Creek Labs distributor.

Silver Creek Labs is not a Multi-Level Marketing enterprise.

In order to help you reach your goals, and become a more informed distributor, we will be sending you boni audiocassettes on Chelation, Oxygen Therapy and other topics as they become available. You will also receive a complimentary copy of Valerie Saxion's book "How To Feel Great All the Time." This book will giv you a better understanding of the human body and how to maintain it more effectively. There is a section in the book designated to giving you an overview of many products you will be distributing.

If you have any additional questions, or if we can be of any further service to you in establishing your distributorship, please do not hesitate to contact Cortney Caylor at 817-236-8557, extension 14, or by emailing her at: [cortney@drval.lv](mailto:cortney@drval.lv)

By agreeing to these terms and conditions, you will be able to fill out and submit your application to become distributor of Dr.Valerie Saxion's product line. When the application is submitted, you will be contacted by a representative to place your opening order and set up your distributor account.

I agree I disagree